The Holy Word does not come strictly in Italian – Another Islamophobic Law stopped in Northern Italy

verfassungsblog.de/the-holy-word-does-not-come-strictly-in-italian-another-islamophobic-law-stopped-in-northern-italy/

Giancarlo Anello Mo 10 Apr 2017

The saga continues: again have regions in Italy governed by the right-wing party Lega Nord tried to use an administrative law to restrict the building of new mosques in the regions. This time, Veneto came up with something new: they made it mandatory to speak only Italian in religious buildings. But the Constitutional Court took a clear stance, for religious freedom and for the importance of language as a cultural good.

A quick recapitulation: in short terms, the Italian Constitution recognizes a system in which all the religious denominations are “equally free” before the law (article 8). The denominations may also sign a formal agreement of cooperation with the State, called “intesa”. Actually, not all religions settled in Italy have their formal agreement. The Islamic community does not. It tried to conclude such a pact but a series of problems prevented the Muslims from concluding.The most relevant obstacle was the difficulty in determining a single organization that represents all the Muslim communities living in the country. As a result, lacking the guarantee of the specific rule of the “intesa”, mosques were often considered “cultural associations” and not fully protected by the principles in matter of freedom of religion.

On the 27th of January 2015, the Lombardy Region approved a Regional Law (n. 2/2015) on the matter of urban government regarding new principles for planning buildings and other structures for religious purposes. The new text presented only two articles containing a number of requisites to build places of worships and temples. Both articles referred only to religious denominations “other than the Catholic Church”. Beyond the bureaucratic terminology, and even at first glance, the new norms were discriminating the Muslim minority and the possibility to build new mosques in the territory of Lombardy. According to the Region, such a strict division was not discriminating, but shaped directly from the Italian Constitution’s rules.

With a well-timed reaction, the Italian Government has appealed to the Constitutional Court against the Lombardy law, claiming the blatant disparity between religious denominations, the discriminating power of the norms, the legal competence of the State over the Region in matters of religious freedom and public security and the the violation of European and international principles of freedom of religion and worship.

The Court faced the question and published its decision on the 24th of March 2016, as commented on here.

In sum, the Court recognized the alleged discrimination between denominations and acknowledged the prevailing power of the State over the Regional power in matters of religious freedom.

Just a few days after (on the 12 of April 2016), as a political reaction of the Northern Lega, the other Region guided by the Party – the Veneto Region – approved another anti-mosque law (n. 12/2016). Similarly to the case in Lombardy, the new regulation was formally enacted as an amendment of the previous law of the territory and landscape. The new text was drafted to take into consideration the just published rationale of the Court, in order to achieve the failed target of making it extremely difficult to erect new religious buildings, particularly for Muslims. New norms have provided the Region and Municipalities the power to establish the criteria and modes of realization of the buildings of all denominations, the Catholic Church included. But that wasn’t all: the Veneto law has added another norm to make it mandatory to speak only Italian during all the activities inside the religious buildings, other than those which are strictly ritual.

Again, the Italian Government appealed to the Constitutional court, claiming the renewed attempt to regulate differently the interests of various religious denominations, and the violation of the limits of the competence of the Region to regulate matters of freedom of religion and linguistic rights.

The Court faced the question and published its decision on 7th of April 2017. In sum, the Court has decided the following points:

The principle according to which either the Region and Municipalities can establish rules and modes to realize religious buildings ("attrezzature religiose") is valid. The new rule is directed to all the religious denominations, without disparities, and without mention to a former cooperation agreement with the state. Being so, the Court admits that the new provision is different from that one that was declared unconstitutional (Dec. n. 63/2016). In other words, this kind of general provision does not make an apparent discrimination, considering that the Region and Municipalities can establish reasonable differences in the regulation of different realities. More specifically, the Court affirms that this rule as such cannot be considered unconstitutional itself, if taken out of its practical and consequent applications.

On the contrary, the principle of using only Italian for all those activities of common interest for religious services is unconstitutional. The court declares that the Region has not the competence to limit linguistic claims in a law concerning the regulation of territory and religious building. Moreover, the Court recalls the importance of language, as a factor of individual and collective identity (dec. n. 42/2017). Language represents a medium of culture and a central element of the relational dimension of the human subjectivity. Thus, given the nature of the fundamental rights of the connected matters, the possibility to limit and regulate their expression must be reserved to the State and it is out of the competence of the Region.

The latter reasoning of the Court is more than remarkable. Since the beginning of this "anti-mosques' saga" discriminative politics and their political actors have tried to insert norms limiting religious freedom within very technical and specified laws concerning administrative matters. This decision can stop this "mimetic" strategy of the Northern Lega, focusing again and definitively on the fundamental nature of the right to religion and worship. Moreover, and in more general terms, the decision emphasizes the fundamental nature of the right to choose a language for self-expression in a pluri-cultural public sphere.

It is not a minor statement: being part of personal identity, language—along with the religion—influences in a direct manner the way in which individuals can interact with other members of society, conditioning their basic legal position. Consequently, in a pluralistic society, linguistic claims not only need to be considered strictly by means of the provisions dedicated to the linguistic minorities, but also protected and framed within a wider «right to culture» for individuals and communities. Choosing a certain language for religious purposes sometimes represents a mandatory element of the religious rite and, under this respect, has to be guaranteed by freedom of religion. Both aims are strongly intertwined with concepts like traditions, beliefs, values and the like, with the consequence that to fully recognise all the legal profiles involved in the linguistic issues, we need to implement the notion of culture as a "legal good", to make it a more gradual and feasible instrument for the protection of fundamental rights.

SUGGESTED CITATION Anello, Giancarlo: *The Holy Word does not come strictly in Italian – Another Islamophobic Law stopped in Northern Italy, VerfBlog,* 2017/4/10, http://verfassungsblog.de/the-holy-word-does-not-come-strictly-in-italian-another-islamophobic-law-stopped-in-northern-italy/, DOI: https://dx.doi.org/10.17176/20170410-202021.